



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Pat nt and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/776,321	04/15/97	WUBBEN	M 29865

IM21/0318  
PEARNE, GORDON, MCCOY & GRANGER  
1200 LEADER BUILDING  
CLEVELAND OH 44114

EXAMINER

SHERRER, C

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/18/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/776,321**

Applicant(s)  
**Wubben et al**

Examiner  
**Curtis E. Sherrer**

Group Art Unit  
**1761**



☒ Responsive to communication(s) filed on Jan 27, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 18-29, 31, 36, 37, 39, 40, and 43-49 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 18-29, 31, 36, 37, 39, 40, and 43-49 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### Part III DETAILED ACTION

#### *Claim Rejections - 35 USC § 112*

1. Claims 28-29, 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claim 36 is considered to indefinite because the scope of the phrase “improved foam head stability” is unknown.
3. Claims 28-29 and 48-49 are indefinite because it is unclear what the basis of the claimed percentages is based upon, e.g., weight, volume, normality, etc.

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Papazian (The New Complete Joy of Home Brewing, page 64) as evidenced by The Practical Brewer (pages 138-39).

6. The product claims are considered to be anticipated because they are directed to products that inherently possess the same ingredients and attributes as claimed and are therefore indistinguishable from the prior art products. The Office does not have the facilities for examining and comparing Applicants' products with the products of the prior art in order to establish that the prior art products do not possess the same material structural and functional characteristics of the claimed products. In the absence of evidence to the contrary, the burden is upon the applicant to prove that the claimed are functionally different than those taught by the prior art and to establish patentable differences. See *In re Best*, 562 F.2d 1252, 195 U.S.P.Q. 430 (CCPA 1977); *Ex parte Gray*, 10 U.S.P.Q.2d 1922, 1923 (BPAI).

7. It is noted that Applicants have submitted a declaration that contains evidence directed to showing a difference between beers produced with hop pectins and beet pectins. While the instant rejection is not directed to using beet pectin, it is never the less considered that the declaratory evidence should be commented on. Specifically, the evidence is not conclusive in establishing a difference between hop pectins and other pectins because no discussion is provided concerning the process by which the pectin extracts were produced. Therefore, it is unclear what amount of actual pectin is contained in each extract.

8. Lastly, it is noted that certain claims are directed to products limited by the amount of anhydrogalacturonic acid contained therein. It is noted that this pectin is inherently found in plants, such as beets and is not a pectin native to only hops.

9. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Lutzen et al (Homebrew Favorites, pp. 80 and 81) as evidenced by The Practical Brewer (pages 138-39) for the same reasons set forth above.

10. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukovskii et al. (S.U. Pat. No. 685689) for the reasons set forth above.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 18, 20-29 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al.

13. The above rejected process claims are considered to be obvious in view of the prior art because the art teaches the well known use of pectins for the Applicants intended purpose but do not specifically teach using hop pectin as the pectin source. As set forth in prior Office Actions, it is considered obvious to use hop pectin in place of other pectins as the foam enhancing pectin.

Therefore, it is considered that a prima facie case of obviousness exists with respect to the process claims and no persuasive arguments have been presented to obviate said obviousness. As set forth in the anticipatory rejections, the declaratory evidence does not clearly indicate unexpected results because it is not known how the pectin extracts were obtained. Further, no statistical data is presented with the evidence so that it is unclear if the stated differences are significant.

14. Claims 18, 20-29 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al in view of The Practical Brewer and in further view of Food Colloids (pp. 418-35) for the reasons set forth above.

***Response to Arguments***

15. Applicants' arguments filed 01/27/99 have been fully considered but they are not persuasive. See Examiner's response above.

***Conclusion***

16. No claim is allowed.

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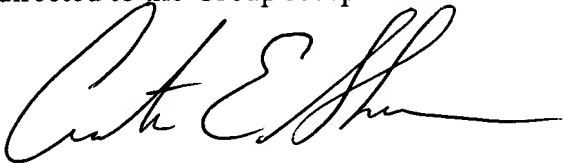
17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax phone number for this Group is (703)-305-3602.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a stylized, flowing script.

Curtis E. Sherrer  
March 17, 1999